

Before the
COPYRIGHT ROYALTY BOARD
United States Copyright Office
Washington, DC

In re

Distribution of Digital Audio Recording
Royalty Funds

CONSOLIDATED
Docket No. 2008-3 CRB DD

PETITION TO PARTICIPATE

Pursuant to 37 C.F.R. § 351.1(b)(2)(i) and in accordance with the notice announcing commencement of proceeding with request for Petitions to Participate, issued by the Copyright Royalty Board (“CRB”), the Alliance of Artists and Recording Companies (“AARC”) hereby files its Petition to Participate in the consolidated proceeding to determine the distribution of the digital audio recording technology (“DART”) royalty fees in the 2007, 2009, 2010 and 2011 Sound Recordings Fund Featured Recording Artists and Copyright Owners Subfunds as well as in the 2008 Sound Recordings Fund Copyright Owners Subfund¹ (collectively referred to as “2007 – 2011 DART Sound Recordings Fund”). 37 C.F.R. § 351.1(b)(2)(i) (2018); Distribution of the 2007, 2008, 2009, 2010, and 2011 Digital Audio Recording Technology Royalty Funds for the Sound Recordings Funds, 83 Fed. Reg. 66,312 (Dec. 26, 2018) (“Consolidated Proceeding Notice”).²

¹ For royalty year 2008, DART Sound Recordings Fund Featured Recording Artists Subfund has been 100% distributed pursuant to the distribution order issued on June 24, 2009. Distribution Order, In the Matter of Distribution of DART Sound Recordings Fund/Featured Artists’ Subfund Royalties for 2008, Docket No. 2009-3 CRB DD 2008 (Jun 24, 2009) [hereinafter 2008 Featured Recording Artists Subfund Distribution].

² The Consolidated Proceeding Notice does not require comments on controversies because the CRB has already determined that a controversy exists. Consolidated Proceeding Notice at 66,313 (“Consistent with 17 U.S.C. 804(b)(8), the Judges determine that . . . a controversy exists with respect to the distribution of the 2007, 2009, 2010, and 2011 DART Sound Recordings Fund royalties from the Copyright Owners Subfund and the Featured Recording Artists Subfund and, with respect to 2008, from the Copyright Owners Subfund.”).

AARC is a non-profit organization formed to administer the Audio Home Recording Act of 1992 (“AHRA”) royalties for featured recording artists and sound recording copyright owners, who have authorized it to do so. Audio Home Recording Act of 1992, 17 U.S.C. §§ 1001-1010 (2017). AARC represents over 440,000 featured recording artists and over 16,000 labels and, therefore, is an “interested copyright party” as defined in section 1001(7)(D) of the AHRA. 17 U.S.C. § 1001(7)(D) (2017).

I. BACKGROUND

A. Royalty Year 2007

In response to a September 15, 2008 notice of settlement and request for partial distribution of the 2007 DART Sound Recordings Fund Featured Recording Artists and Copyright Owners Subfunds filed by AARC, on behalf of the settling parties, the CRB distributed 98% of the Sound Recordings Fund.³ Notice of Settlement and Request for Partial Distribution of the 2007 Sound Recordings Fund Royalties, In the Matter of Distribution of DART Sound Recordings Fund/Featured Recording Artist and Copyright Owner Subfund Royalties for 2007, Docket No. 2008-3 CRB DD 2007 (Sept. 15, 2008) (“2007 AARC Notice”);

³ In addition to the initial partial distribution noted above, pursuant to AARC’s supplemental requests for distribution of the 2007, 2008 and 2009 Sound Recordings Fund Royalties, the CRB issued an order on March 8, 2012 granting 98% of 2007 – 2009 back payments received after the initial distribution orders were issued. Supplemental Request for Distribution of the 2007 DART Sound Recordings Fund Featured Recording Artists and Copyright Owners Subfunds Royalties, In the Matter of Distribution of DART Sound Recordings Fund Featured Recording Artists and Copyright Owners Subfunds Royalties for 2007, Docket No. 2008-3 CRB DD 2007 (Feb. 17, 2012); Supplemental Request for Distribution of the 2008 DART Sound Recordings Fund Copyright Owners Subfund Royalties, In the Matter of Distribution of DART Sound Recordings Fund Copyright Owners Subfund Royalties for 2008, Docket No. 2009-3 CRB DD 2008 (Feb. 17, 2012); Supplemental Request for Distribution of the 2009 DART Sound Recordings Fund Featured Recording Artists and Copyright Owners Subfunds Royalties, In the Matter of Distribution of DART Sound Recordings Fund Featured Recording Artists and Copyright Owners Subfunds Royalties for 2009, Docket No. 2010-5 CRB DD 2009 (Feb. 17, 2012); Order Granting in Part AARC’s Supplemental Requests for Partial Distribution of 2007, 2008 and 2009 DART Sound Recordings Fund Royalties, In the Matter of Distribution of 2007, 2008 and 2009 Digital Audio Recording Royalty Funds, Docket Nos. 2010-5 CRB DD 2009, 2009-3 CRB DD 2008, 2008-3 CRB DD 2007 (Mar. 8, 2012) [hereinafter 2007 – 2009 Supplemental Distribution].

Distribution Order, In the Matter of Distribution of 2007 Digital Audio Recording Royalty Funds, Docket No. 2008-3 CRB DD 2007 (Oct. 14, 2008). According to AARC's settlement notice, David Powell and Matthew Primous were non-settling parties. 2007 AARC Notice.

B. Royalty Year 2008

On July 21, 2009, AARC, on behalf of the settling parties, reported the settlement status to the CRB and requested a partial distribution of the 2008 DART Sound Recordings Fund Copyright Owners Subfund ("2008 Copyright Owners Subfund").⁴ Notice of Settlement and Request for Partial Distribution of the 2008 Sound Recordings Fund/Copyright Owners Subfund Royalties, In the Matter of Distribution of DART Sound Recordings Fund Copyright Owners Subfund Royalties for 2008, Docket 2009-3 CRB DD 2008 (Jul 21, 2009). Specifically, AARC reported that there were two non-settling parties: Matthew Primous and Eugene "Lambchops" Curry/Tajai Music. *Id.* On August 19, 2009, the CRB granted the settling parties' request for distribution of 98% of the 2008 Copyright Owners Subfund.⁵ Order Granting AARC's Request for Partial Distribution of 2008 DART Sound Recordings Fund/Copyright Owners Subfund Royalties, In the Matter of Distribution of 2008 Digital Audio Recording Royalty Funds, Docket No. 2009-3 CRB DD 2008 (Aug. 19, 2009).

C. Royalty Year 2009

On September 1, 2010, AARC, on behalf of the settling parties, filed a notice of settlement and request for partial distribution of the 2009 DART Sound Recordings Fund Featured Artists and Copyright Owners Subfunds ("2009 Sound Recordings Fund"). Notice of Settlement and Request for Partial Distribution of the 2009 Sound Recordings Fund Featured

⁴ 2008 Featured Recording Artists Subfund Distribution, *supra* note 1.

⁵ 2007 – 2009 Supplemental Distribution, *supra* note 3.

Artists and Copyright Owners Subfund Royalties, In the Matter of Distribution of DART Sound Recordings Fund Copyright Owners Subfund and Featured Artist Subfund Royalties for 2009, Docket No. 2010-5 CRB DD 2009 (Sept. 1, 2010). Additionally, AARC reported that the settling parties represent all claimants to the 2009 Sound Recordings Fund except for Herman Kelly (and two other claimants, Musiranma Comedy Play Music and AfterSchool Publishing, Inc., with which Mr. Kelly is affiliated), Eric N. Burns, and Marcus Labron Washington. Id. On November 2, 2010, the CRB granted AARC's request and ordered the distribution of 98% of the 2009 Sound Recordings Fund.⁶ Order Granting AARC's Request for Partial Distribution of 2009 DART Sound Recordings Fund Featured Artists and Copyright Owners Subfund Royalties, In the Matter of Distribution of 2009 Digital Audio Recording Royalty Funds, Docket No. 2010-5 CRB DD 2009 (Nov. 2, 2010).

D. Royalty Year 2010

In response to an August 23, 2010 notice of settlement and request for partial distribution of the 2010 Sound Recordings Fund Feature Artists and Copyright Owners Subfunds filed by AARC, on behalf of the settling parties, the CRB distributed 98% of the Sound Recordings Fund. Notice of Settlement and Request for Partial Distribution of the 2010 DART Sound Recordings Fund Featured Recording Artists and Copyright Owners Subfunds Royalties, In the Matter of Distribution of DART Sound Recordings Fund Featured Recording Artists and Copyright Owners Subfunds Royalties for 2010, Docket No. 2011-6 CRB DD 2010 (Aug. 23, 2011) ("2010 AARC Notice"); Order Granting AARC's Request for Partial Distribution of 2010 DART Sound Recordings Funds, In the Matter of Distribution of 2010 Digital Audio Recording Royalties Funds, Docket No. 2011-6 CRB DD 2010 (Nov. 17, 2011). In the settlement notice, AARC

⁶ Id.

reported that the distribution proceeding of 2010 Sound Recordings Fund was settled except for the claims of Eric N. Burns, Arpi Takacs, Eugene “Lambchops” Curry, Herman Kelly, Afterschool Publishing, Eddie Rolling, Write 4 U Publishing/Treasa Fennie, and Ernest William Furrow. 2010 AARC Notice.

E. Royalty Year 2011

For royalty year 2011, AARC filed a settlement notice and request for partial distribution of the 2011 Sound Recordings Fund Featured Recording Artists and Copyright Owners Subfund (“2011 Sound Recordings Fund”) on July 11, 2012. Notice of Settlement and Request for Partial Distribution of the 2011 DART Sound Recordings Fund Featured Recording Artists and Copyright Owners Subfunds Royalties, In the Matter of Distribution of DART Sound Recordings Fund Featured Recording Artists and Copyright Owners Subfund Royalties for 2011, Docket No. 2012-3 CRB DD 2011 (Jul. 11, 2012). In its settlement notice, AARC identified the following non-settling parties: Eric N. Burns, Treasa Fennie aka Write 4U, Herman Kelly, Pramod Kesav Narayana Pillai, and Marc Alan Suaton. Id. On September 20, 2012, the CRB granted AARC’s request for distribution of 98% of the 2011 Sound Recordings Fund. Order Granting AARC’s Request for Partial Distribution of 2011 DART Sound Recordings Funds, In the Matter of Distribution of 2011 Digital Audio Recording Royalty Funds, Docket No. 2012-3 CRB 2011 (Sept. 20, 2012).

II. PETITION TO PARTICIPATE

AARC is an “interested copyright party” as defined in §1001 (7)(D) of the AHRA and has a significant interest in the consolidated 2007 – 2011 DART Sound Recordings Fund distribution proceeding. 17 U.S.C. § 1001(7)(D) (2017); 37 C.F.R. § 351.1(2)(i)(C) (2018); Consolidated Proceeding Notice. AARC represents the majority of the featured recording artists

who have performed on and copyright owners of sound recordings, which were embodied in digital or analog musical recordings and distributed during the 2007 – 2011 royalty years, all of whom have filed claims in the 2007 – 2011 DART Sound Recordings Fund distribution proceedings. AARC has participated in and received all or substantially all of the funds through settlement or award for the royalty year 2007 – 2011, as specified in Section I above, and all other DART distribution proceedings held since the enactment of the AHRA.

The following chart summarizes the royalty years and subfunds for which AARC has filed claims and petitions to participate:

Royalty Year	Featured Recording Artists Subfund	Copyright Owners Subfund
2007	X	X
2008	100% Settled & Concluded	X
2009	X	X
2010	X	X
2011	X	X

III. PAPER PROCEEDINGS

The Consolidated Proceeding Notice reported that the CRB finds it appropriate to conduct a paper proceeding because of “the relatively modest amount of royalties in dispute after previously approved partial distributions and the anticipated small number of non-settling parties.” Consolidated Proceeding Notice at 66,313; 17 U.S.C. § 803(b)(5)(B) (2017); 37 C.F.R. § 351.3(c) (2018). This means that the CRB will determine the remaining issues on the basis of “the filing of a written direct statement by each participant, a response of an opposing participant, and one additional response from the participant.” Consolidated Proceeding Notice at 66,313; 17 U.S.C. § 803(b)(5)(B) (2017).

AARC hereby supports the CRB’s decision. Section 803(b)(5) of the United States Code, which addresses paper proceedings, was implemented to provide “access to the adjudicative

process to persons with relatively small copyright royalty claims while, at the same time, not allowing small claimants to unfairly exploit settlement leverage by unreasonably prolonging proceedings.” Procedural Regulations for the Copyright Royalty Board, 70 Fed. Reg. 30,901, 30,903 (May 31, 2005); 17 U.S.C. § 803(b)(5)(B) (2017). Moreover, the CRB has broad discretion to impose such paper proceedings. Procedural Regulations for the Copyright Royalty Board, 70 Fed. Reg. 30,901, 30,903 (May 31, 2005); 17 U.S.C. § 803(b)(5)(B) (2017).

Copyright Arbitration Royalty Panel (“CARP”) precedent is relevant in determining the need for evidentiary hearings. Section 803 states that prior CAPR decisions shall be considered by the CRB for their precedential value. 17 U.S.C. § 803(a)(1) (2017) (“The Copyright Royalty Judge shall act . . . on the basis of a written record, prior determinations and interpretations of the Copyright Royalty Tribunal, Librarian of Congress, the Register of Copyrights, copyright arbitration royalty panels”). The CARP has waived formal hearings for paper proceedings when it serves a public interest by “minimize[ing] the costs to all claimants while still allowing complete consideration of all of the evidence already submitted by the parties in their direct cases.” CARP Order, Docket No. 95-1 CARP DD 92-94 (Oct. 4, 1996); see Distribution of the 1992, 1993, and 1994 Musical Works Funds, 62 Fed. Reg. 6,558, 6,559 (Feb. 12, 1997). Paper proceedings have been authorized by the CARP on the grounds that they avoid the high administrative costs of a formal hearing in proceedings where, as in this case, there are small amount of royalties in controversy. Scheduling Order, In the Matter of Distribution of 1995, 1996, 1997 and 1998 Digital Audio Recording Funds, Docket No. 99-3 CARP DD 95-98 (Jun. 19, 2000) (granting the Motion to Decide the Controversy on the Basis on Written Pleadings “[b]ased upon the record in this case and the full arguments of the parties and upon due deliberation by the Panel”).

Here we have a relatively small sum of money with few non-settling parties. Therefore, it is clear that in this case, “live hearings would not aid the Judges in their deliberations and any legal requirements could be met with paper proceedings.” Procedural Regulations for the Copyright Royalty Board, 70 Fed. Reg. 30,901, 30,903 (May 31, 2005); c.f., Mathew v. Eldridge, 424 U.S. 319, 348 (1976) (asserting that an evidentiary hearing is not always the most effective method of decision making); United States v. Florida E. Coast Ry. Co., 410 U.S. 224, 239-42 (1973) (holding that the opportunity to present written submissions of their case satisfied the “hearing requirement” of the Administrative Procedure Act without the need for oral arguments, cross-examination or oral testimony); U.S. ex rel. Springfield Terminal Ry. Co. v. Quinn, 14 F.3d 645, 652 (D.C. Cir. 1994) (holding that a paper proceeding was sufficient to satisfy the “hearing” requirement).

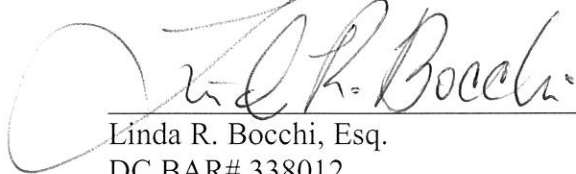
IV. FILING FEE

In the Consolidated Proceeding Notice, pursuant to the AHRA and CRB regulations, the CRB ordered any interested party whose claim does not exceed \$1,000 to provide a statement to that effect. No filing fee is required for such claims. Any interested party whose claim does exceed \$1,000, must file a \$150 filing fee payment with its petition. 37 C.F.R. § 351.1(b)(4) (2018); Consolidated Proceeding Notice at 66,313. AARC will seek distribution in excess of \$1,000. Therefore, in accordance with 17 U.S.C. § 803(b)(2)(D)(ii)(I) and 37 C.F.R. § 351.1(b)(4), the fee of one hundred and fifty dollars (\$150) is being paid in the eCRB through Pay.gov. 17 U.S.C. § 803(b)(2)(D)(ii)(I) (2017); 37 C.F.R. § 351.1(b)(4) (2018).

V. CONCLUSION

Pursuant to the Consolidated Proceeding Notice, and in accordance with the requirements of the AHRA and the CRB regulations, AARC hereby submits its Petition to Participate in the consolidated proceeding for the distribution of the 2007 – 2011 DART Sound Recordings Fund royalties, along with the \$150 filing fee. Consolidated Proceeding Notice; 17 U.S.C. § 803(b)(2)(D)(ii)(I); 37 C.F.R. § 351.1(b)(4). AARC also supports the CRB's decision to conduct a paper proceeding.

Respectfully submitted,
On Behalf of AARC

A handwritten signature in dark ink, appearing to read "L. R. Bocchi", is written over a horizontal line.

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